**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**WEALTH TAX REFERENCE No. 89 of 1995**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE R.S.GARG**
**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**COMMISSIONER OF WEALTH-TAX - Applicant(s)**
**Versus**
**MUKUL K. SHETH (HUF) - Respondent(s)**

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**Appearance :**
MR MANISH R BHATT for Applicant(s) : 1,
None for Respondent(s) : 1

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**CORAM : HONOURABLE MR.JUSTICE R.S.GARG**

**and**

**HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 17/07/2006**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE R.S.GARG)**

1. Income Tax Appellate Tribunal, at the instance of the Revenue, has referred the following questions to this Court for its answer.

   “1. Whether, the Appellate Tribunal is right in law and on facts in setting aside the assessment order in respect of valuation of the property in question and directing the Assessing Officer too value the property under Schedule III of the wealth-tax Act?

   2. Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to allow the exemption under section 5[i][iv] and 5[1][xiii] read with section 5[1A] of the Wealth-tax Act in respect of assessee's share in immovable and movable properties belonging to the partnership firm?”

2. So far as the question relating to application of the Rules/Schedule-III is concerned, according to the Revenue, the Rules came in force in 1989 and as the matters relate to the assessment years 1975-76 and 1982-83, Rules would not apply. This very specific contention has been negatived by this Court in the case of Commissioner of Wealth-tax v. Rajeshkumar R. Gandhi (Individual) reported in 219 ITR 408, where the High Court has observed that the Rules being procedural and hand-maids to arrive to a positive conclusion, the applicability of the

Rules could not be denied. In view of the said judgment, the first question has to be answered against the Revenue.

3. So far as question no.2 is concerned, the assessee had sought exemption under section 5[i][iv] and 5[1][xiii] read with section 5[1A] of the Wealth-tax Act in respect of the share in immovable and movable properties belonging to the partnership firm, the question is not res integra in view of the judgment of this Court **in the case of Commissioner of Wealth-tax v. Maheshkumar R. Patel, reported in 216 ITR 272**. There also, the Court observed that a partner is entitled to exemption of his share, which he has in partnership firm from being included in his wealth. In view of the said judgment, the second question is also answered against the Revenue.

4. Both the questions are answered against the Revenue. The Reference stands disposed of.

**[R.S. GARG, J.]**

**[M.R. SHAH, J.]**

**pirzada/-**